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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: CC Docket No. 96-98
Opposition to and Request for Dismissal of Petition for Relief and
Compliance of Excell Agent Services, Inc.

Dear Mr. Caton:

Roseville Telephone Company, by its attorneys, hereby submits an original and four (4) copies of its *Opposition To and Request For Dismissal of Petition For Relief and Compliance* submitted by Excell Agent Services, Inc. ("EAS"). The EAS Petition raises issues regarding access to directory listings and Roseville expects that the arguments may be reviewed with *Petitions for Reconsideration of the Second Report and Order and Memorandum Opinion and Order* in the above-captioned proceeding.

Should there be any questions regarding this matter, please contact the undersigned.

Very truly yours,



Kathryn A. Kleiman
Counsel for
Roseville Telephone Company

KAK/jr
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matters of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
of 1996)	
)	
Interconnection Between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	
)	
Area Code Relief Plan for Dallas and)	NSD File No. 96-8
Houston, Ordered by the Public Utility)	
Commission of Texas)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan)	
)	
Proposed 708 Relief Plan and 630)	IAD File No. 94-102
Numbering Plan Area Code by)	
Ameritech-Illinois)	

**OPPOSITION TO AND REQUEST FOR DISMISSAL OF
PETITION FOR RELIEF AND COMPLIANCE
BY EXCELL AGENT SERVICES, INC.**

Roseville Telephone Company ("Roseville") hereby opposes and requests the dismissal of an Ex Parte filing, styled *Petition for Relief and Compliance* ("Petition"), submitted by Excell Agent Services ("EAS") on September 9, 1996. This filing was listed in the Commission's List of Ex Parte Presentations of September 13, 1996. The EAS *Petition* raises several issues involving access to and control of information provided to competitive directory assistance services and Roseville expects that EAS' arguments may be reviewed with *Petitions for Reconsideration of the Second Report and Order and Memorandum Opinion and Order*, in the above-captioned proceeding, CC Docket No.

96-98, FCC 96-333, released August 8, 1996 ("*Second R&O*").

Roseville submits that EAS' *Petition*, insofar as it requests unlisted subscriber list information including unlisted names, addresses and phone numbers of subscribers, is inconsistent with the 1996 Telecommunications Act and with state laws insuring privacy and must be denied by the Commission.

I. EAS' Request for the Provision of Unlisted Subscriber Information Contravenes the 1996 Telecommunications Act and Could be Inconsistent with Certain State Privacy Requirements.

In its *Petition*, EAS asks that the Commission, either through clarification of its interconnection rules or by reconsideration and revision of Section 51.217(c)(iii), require LECs to make available to EAS and to other independent directory assistance providers the names of the LEC's subscribers who have chosen to maintain unlisted telephone numbers. EAS seems to argue that although the 1996 Telecommunications Act may authorize LECs to withhold disclosure of unlisted telephone numbers, it does not authorize withholding the names of subscribers with unlisted telephone numbers. Further, EAS argues that it should have access to all unlisted subscriber list information in any event.

Roseville disagrees. The 1996 Telecommunications Act explicitly protects the privacy choices of subscribers and requires subscriber list information to be disclosed only if it is listed information. Section 222 of the Act, in pertinent part, reads:

Sec. 222 Privacy of Customer Information

(f) Definitions

(3) Subscriber List Information. ---The term 'subscriber list information' means any information---

- (A) identifying the **listed** names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications... or any combination of such **listed** names, numbers, addresses, or classifications; and
- (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. [emphasis added]

Clearly, the statute requires LECs to share information of only listed subscribers and, therefore, it allows LECs to maintain the confidentiality of information not only of unlisted numbers but also the names and addresses of unlisted subscribers.

II. The Commission's Rules Codify Federal Law

The Telecommunications Act places limits on the distribution of subscriber list information which the Commission codified in Section 51.217(c)(iii) of its regulations. In its discussion in the *Second R&O*, the Commission stated its clear intent that only listed subscriber information must be available on a nondiscriminatory basis:

We conclude that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted telephone numbers, or other information that a LEC's customer has specifically asked the LEC not to make available.

Second R&O, para. 135.

Further, the issue that EAS is raising is not a new one. In setting the rules for distribution of billing names and addresses ("BNA"), the Commission reviewed a similar debate and weighed the competitive needs for information versus the privacy rights of subscribers who do not want their information distributed. The Commission arrived at the same conclusion, that is, information need not be shared if the subscriber affirmatively chooses to limit its distribution. This is codified in Section 64.1201(e)(3) of the Commission's rules, as follows:

(3) No local exchange carrier shall disclose the billing name and address information associated with any subscriber who has affirmatively withheld consent for disclosure of BNA information.

Accordingly, the provisions of Section 51.217 follow the statutory requirements of the Telecommunications Act and Commission precedent.

III. Regulations of Certain States Give Subscribers The Right to Determine Whether Telephone Numbers, Address and Names Will Be Listed.

The regulations of certain states allow subscribers to choose which information will be listed and published. Roseville provides local exchange service in the State of California, which allows subscribers to opt-out of having their telephone numbers, addresses, and names listed in telephone and street address directories, or published in the directory assistance records available to the general public (CPUC Decisions Nos. 92860 and 93361, Case No. 10206). Pursuant to the decisions, LECs may not sell or distribute the unpublished information, except to law enforcement and public health and safety organizations for purposes as set out in the regulations. EAS' request appears to be inconsistent with the California requirements.

Furthermore, under the California privacy requirements, competitive directory assistance providers, such as EAS, are not subject to any competitive disadvantage. Neither Roseville nor EAS may disclose the name of a subscriber who has requested that his/her name or number be unlisted, and both must return to the inquirer with a result of "not found."

IV. Conclusion

According to the California Legislature, the top 10 cities with the highest percentage of unlisted numbers are located in California. *California Senate Bill No. 1035, Sec. 1*, 1996 Cal ALS 675. In addition, a large percentage of California subscribers choose to keep their names and addresses unlisted. *Id.* Accordingly, there is a high expectation among California subscribers, and subscribers throughout the country who have requested privacy, that the needs of competition will be balanced with the right of privacy and that their choice of privacy for a home address, a child's telephone number or a personal name (a piece of information that can reveal much about location) will be honored. Furthermore, more than just an expectation, subscribers who have affirmatively chosen to keep their information unlisted have entered into an agreement with the LEC under which the LEC is required to maintain the confidentiality of that information. LECs such as Roseville take this agreement seriously.

Protection of unlisted information is the clear intent of Congress in the Telecommunications Act of 1996, the FCC in its Interconnection and BNA regulations, and states such as California in their laws and regulations.

For the reasons set forth above, Roseville asks the Commission to dismiss or reject the *Petition for Relief and Compliance* submitted by Excell Agent Services as an *ex parte* Petition.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY



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November 20, 1996

CERTIFICATE OF SERVICE

I, Judy Ryan, hereby certify that copies of the foregoing "Opposition To and Request For Dismissal of Petition for Relief and Compliance by Excell Agent Services, Inc. were filed with the Federal Communications Commission on November 20, 1996, and copies served on that same day by First class U.S. Mail, postage prepaid, to the following:

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